IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.10557 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.Pramod J. Pawar, for the Petitioners
Mr.S.M.Gorwadkar, for Respondent.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 24, 2005

P.C.

. Leave to defend has been granted subject to the petitioners herein depositing an amount of Rs.19.00 lakhs within two months from the date of the order. The order is dated 13th August, 2004.

2. This petition is filed on 17th December, 2004 i.e. much after the time given for deposit. It is submitted on behalf of the petitioners that earlier an Appeal From Order had been filed. That was held not to be maintainable and in these circumstances the present petition has been filed.

3. The main defence of the petitioners seems to be that the cheques were undated. The very fact that the petitioners have not disputed the signature on the cheques coupled with the receipts

and letter of undertaking for a sum of Rs.10.00 lakhs would indicate that the cheques had been issued by the petitioner for the sums which were due and payable. Once the cheques were issued which are negotiable instrument the burden is on the petitioner to show that there was no consideration. The petitioners have been unable to discharge that burden. At the prima facie stage considering the facts in my opinion the learned trial Court was right in passing the order of deposit. No case made out for interference by this Court in the exercise of extra ordinary jurisdiction as no triable issues are made out and this would not be fit case where even if the judgment in the case of **M/s.Mechalec Engineers and Manufacturers Vs. M/s.Basic Equipment Corporation, A.I.R. 1977 SC 577** is considered this is not a fit case for interference. The amount claimed is Rs.24.00 lakhs which includes interest. The trial Court ordered only deposit of Rs.19.00 lakhs. No interference called for. Writ Petition rejected.

(F.I. REBELLO, J.)